IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	
v.	)	**2:06-cr-351**
	)	**2:14-cv-786**
MARCUS JOHN CARSWELL,	)	
Defendant.	)	

MEMORANDUM ORDER

Now pending before the Court is Defendant Marcus John Carswell's MOTION TO CORRECT SENTENCE UNDER 28 U.S.C. § 2255 (ECF No. 78), filed on his behalf by the Federal Public Defender. No response is necessary.

Carswell argues that he should be re-sentenced because he no longer qualifies as a career offender under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e). Specifically, he argues that his prior conviction for manufacturing, delivering, or possession with intent to manufacture or deliver a controlled substance under Pennsylvania law, 35 Pa.C.S.A. § 780-113(a)(30), is not a "serious drug offense" under the elements-driven categorical approach used in the recent Supreme Court decision in *Descamps v. United States*, 133 S. Ct. 2276 (2013).

Unfortunately for Carswell, this precise argument was rejected by the United States Court of Appeals for the Third Circuit in *United States v. Abbott*, 748 F.3d 154 (3d Cir. 2014), where the Court held that § 780-113(a)(30) is a "divisible" statute. Thus the modified-categorical approach may be applied to determine whether a prior conviction under that statute qualifies as an ACCA predicate offense. As the Federal Public Defender recognizes, this Court is required to follow the holding in *Abbott*. Applying the modified-categorical approach, Carswell's two prior convictions for possession with the intent to deliver cocaine qualify as ACCA predicate offenses.

Accordingly, the MOTION TO CORRECT SENTENCE UNDER 28 U.S.C. § 2255 (ECF No. 78) is **DENIED**. Civil Action No. 14-786 shall be marked closed. Defendant shall have the right to appeal this ruling.

SO ORDERED this 25th day of June, 2014.

BY THE COURT:

s/ Terrence F. McVerry
United States District Court Judge

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